

January 21, 2020

Bruce H. Engell
T: 416-947-5081
bengell@weirfoulds.com

**VIA E-MAIL: clerk@hamilton.ca
AND BY COURIER**

File 16595.00023

City of Hamilton
71 Main Street West
1st Floor
Hamilton, ON L8P 4Y5

Attention: Andrea Holland, City Clerk

Dear Ms. Holland:

Re: DEVELOPMENT CHARGES COMPLAINT
Pursuant to Section 20 of the *Development Charges Act, 1997, S.O. 1997, c.27*
391 Victoria Avenue

We represent Alphabet Self Storage Victoria Inc., the registered owner of the property municipally known as 391 Victoria Avenue, in the City of Hamilton (the "**Property**"), which is an industrial property. a portion of which our client will be refitting as a storage facility. The Property is designated Industrial and zoned Industrial. It appears to have previously been used for a canning operation, a permitted Industrial use. Our client is refitting the building, but not enlarging it, as a storage facility, a use which is also a permitted Industrial Use in the zoning and in conformity with the Official Plan.

In order to obtain a building permit for the renovations, the City advised Alphabet that it was required to pay \$924,705 in Development Charges (the "**DCs**"). On or about November 13, 2019, Alphabet's contractor paid those DCs on Alphabet's behalf, under protest. A copy of the receipt from the City is attached.

We hereby file this complaint pursuant to section 20 of the *Development Charges Act, 1997, S.O. 1997, c.27*, on the basis that:

- a) the amount of the DCs was incorrectly determined because a credit is available to be applied against the DCs and the amount of the credit was incorrectly determined; and

- b) the imposition of the DCs results from an error in the application of the development charge by-law.

Because there is a credit for the existing area of industrial lands, when renovations are made for a different industrial use, without increasing the area of the building, there should be no development charges payable on that renovation.

Under Development Charge By-law 14-153, Industrial Development was defined as included a building used for “storing...something”. It went on to say that, “Without limiting the generality of the foregoing”, Industrial Development also includes “a warehouse and a mini-storage facility” (which was redundant, since both clearly fall under the general language in the definition of a building used for “storing...something”).

In August 2018, the City passed By-law 18-219 (section 1.11) to amend its zoning by-law to clarify that mini-storage facilities fall within the defined term “warehouse”.

On June 12, 2019, the City passed a new Development Charge by-law, By-law 19-142 (the “**DC By-law**”) which did not change main definition of Industrial Development – it still includes a building “used for storing...something”. It also continued to add, “without limiting the generality of the foregoing”, that Industrial Development includes a “warehouse”. This is consistent with the City’s update of its zoning by-law and the definition of “warehouse” in the zoning.

Attached are copies of the definition from all three of those by-laws.

Nowhere in the zoning by-law or in the DC By-law is there any definition of what a mini-storage facility is supposed to be and how it is distinguished from other forms of warehouses. There is no indication that what our client has proposed is a mini-storage facility, as opposed to another form of storage facility. Likewise, nowhere in the DC By-law does it say that mini-storage facilities do not fall within the definition of Industrial Development.

Had the City intended to exclude mini-storage facilities, or other storage facilities, from its very general definition of Industrial Development, it could easily have done so in the DC By-law with wording such as, “Despite the generality of the foregoing, mini-storage facilities are not Industrial Development for the purposes of this By-law”.

If the City had intended to exclude certain storage facilities from Industrial Development, such as mini-storage facilities, staff certainly did not express that intent in drafting the DC By-law. When the City uses “warehouse” in that by-law, without definition, it can be presumed to mean

the same as when it uses “warehouse” in its zoning by-law. There is nothing in the DC By-law to indicate a different intent.

On the basis of the above reasons and such further reasons as may arise, we respectfully request that the City proceed to schedule a hearing of this complaint before Council. We would appreciate the opportunity to discuss this complaint with staff in hopes of having it addressed in advance of the hearing date. Should you require any additional information, please do not hesitate to contact us. Otherwise, we look forward to working with staff to rectify this matter.

Yours truly,

WeirFoulds LLP



Bruce H. Engell

BHE/jnb
Attachments

c: Corporate Services Department, City of Hamilton
Client

14161247.2



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Building Division

CHARGES TO BE PAID PRIOR TO ISSUANCE OF BUILDING PERMIT

LOCATION: 391 Victoria Ave DATE: NOV. 13/2019
 PLAN & LOT NO: _____ ANC DUN FLA GLA HAM SC FOLDER NUMBER: 19-136210
 PAID BY: 924 ALPHABET SELF STORAGE VICTORIA INC
 Name
120 ADELAIDE ST. WEST UNIT 803 TORONTO
 Address

| | AMOUNT | |
|---|---------|---|
| CASH IN LIEU OF PARKLAND DEDICATION | / | METHOD OF PAYMENT: |
| CITY DEVELOPMENT CHARGES | 924 705 | <input checked="" type="checkbox"/> Cheque _____ |
| <input type="checkbox"/> RESIDENTIAL # UNITS _____ <input type="checkbox"/> NON-INDUSTRIAL SQ FT _____ <input checked="" type="checkbox"/> INDUSTRIAL SQ FT _____ <input type="checkbox"/> SPECIAL AREA TYPE _____ # UNITS _____ ACRES _____ SQ FT _____ | | <input type="checkbox"/> Cash _____ <input type="checkbox"/> Debit _____ <input type="checkbox"/> Charge Card _____ |
| EDUCATIONAL DEVELOPMENT CHARGES | / | Receipt #: _____ |
| <input type="checkbox"/> RESIDENTIAL # UNITS _____ <input type="checkbox"/> NON-INDUSTRIAL SQ FT _____ <input type="checkbox"/> INDUSTRIAL SQ FT _____ | | PAID BY: |
| ADDITIONAL FEES / CHARGES | / | <input checked="" type="checkbox"/> Applicant |
| <input type="checkbox"/> ADDITIONAL PERMIT FEE <input type="checkbox"/> LOT GRADING SECURITY FEE # UNITS _____ <input type="checkbox"/> LOT GRADING INSPECTION FEE # UNITS _____ <input type="checkbox"/> MODEL HOME SECURITY FEE <input type="checkbox"/> SURCHARGE % _____ <input type="checkbox"/> GO TRANSIT # UNITS _____ <input type="checkbox"/> OTHER _____ <input type="checkbox"/> OTHER _____ <input type="checkbox"/> OTHER _____ | | <input type="checkbox"/> Owner <input type="checkbox"/> Contractor <input type="checkbox"/> Other: (Specify) _____ |
| TOTAL | 924 705 | |

CITY DEVELOPMENT CHARGE EXEMPTION: TOTAL: _____
 EDUCATIONAL DEVELOPMENT CHARGE EXEMPTION: TOTAL: _____
 NOTES: _____

WHITE – CUSTOMER COPY
 GREEN – BUILDING DIVISION FILE COPY
 CANARY – AUDIT COPY
 PINK – FINANCE
 REVISED SEPTEMBER 2017

STAFF : mm / AA

4746215-11/13/2019, \$924,705.00 City Devel

BUILDING DIVISION -City of Hamilton
71 Main St. W, 3rd Flr. Hamilton L8P4Y5
www.hamilton.ca/buildingpermitquery
HST: \$88932 3218 RT0001
905-546-2720
Thank you!
Nov-13-2019 08:57
Ref: 1746925
Sales Person: bld f

1 City Development Charges \$924705.00
Address: 391 VICTORIA AVENUE NORTH

| | |
|--------|-------------|
| HST 0% | \$0.00 |
| GST 0% | \$0.00 |
| PST 0% | \$0.00 |
| Total | \$924705.00 |
| Cheque | \$924705.00 |
| Change | \$0.00 |

www.hamilton.ca/buildingpermitquery

BY-LAW 14-153

Being a By-law respecting development charges on lands within The City of Hamilton

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- (w) "industrial development" means a building or structure used, designed or intended for use for, or in connection with,
- (i) manufacturing, producing, processing, storing or distributing something;
 - (ii) research or development in connection with manufacturing, producing or processing, something;
 - (iii) retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site which the manufacturing, production or processing takes place; and
 - (iv) office or administrative purposes, if they are, carried out with respect to manufacturing, producing, processing, storage or distributing of something, and, in or attached to the building or structure used for that manufacturing, producing or processing, storage or distribution.
 - (v) Any use inside the Urban Area, that would, except for its location inside the Urban Area Boundary, be considered an agricultural use under this By-law.

Without limiting the generality of the foregoing, industrial development also includes a building used as a commercial greenhouse which is not an agricultural use as defined herein, a warehouse, and a mini-storage facility.

For the purposes of this By-Law, Industrial development also includes hotels and hangars.

1.11 That the definition of **Warehouse** be amended by adding the words “may include a Mini Storage Facility but” after the words “A Warehouse” and before the words “shall not include”, so that the definition reads as follows:

“Warehouse Shall mean the use of building or structure, or part thereof, for the bulk storage or distribution of goods to industrial, commercial or institutional business users or other wholesalers, but shall not include retailing of goods to the general public. A Warehouse may include a Mini Storage Facility but shall not include a Waste Management Facility, Salvage Yard or Towing Establishment.”

- (oo) **“Industrial Development”** means a Building used, designed or intended for use for, or in connection with,
- (i) manufacturing, producing, processing, storing or distributing something;
 - (ii) research or development in connection with manufacturing, producing or processing, something;
 - (iii) retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site which the manufacturing, production or processing takes place;
 - (iv) office, administrative, clerical, management, consulting, advisory or training purposes, if they are, carried out with respect to manufacturing, producing, processing, storage or distributing of something, and, in or attached to the Building used for that manufacturing, producing or processing, storage or distribution; and
 - (v) any use inside the Urban Area, that would, except for its location inside the Urban Area Boundary, be considered an Agricultural Use under this By-law.

Without limiting the generality of the foregoing, for the purpose of this By-law, Industrial Development also includes a warehouse, a Hangar, an Artist Studio and a Production Studio but not a Communications Establishment.